

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1769/88

New Delhi this the 3rd day of December, 1993.

THE HON'BLE MR J.P. SHARMA, MEMBER (J)
THE HON'BLE MR B.K. SINGH, MEMBER (A)

Shri Manohar Lal
D.1674
S/o Shri Sant Ram
R/o Qr No 97/3
DRP Line,
DELHI--6

.... ... Applicant

(By Advocate Shri J.P. Verghese)

VERSUS

1. Union of India through
1. Union Territory of Delhi through
The Chief Secretary,
Old Secretariat
Delhi.
2. Commissioner of Police
Delhi Police
MSO Building
Police Headquarters
New Delhi-110002. .. Respondents

(By Advocate Shri M.M. Sudan)

O R D E R (Oral)

(By Hon'ble Mr J.P. Sharma, Member (J))

The applicant was appointed as Sub Inspection(E), in Delhi Police on 29.06.1978 There Delhi Police Appointment and Recruitment Rules, 1980 in Para 5(e) ^{ments} lays down that all appoint~~ments~~ will be on temporary basis of probation of 2 years, when their work and conduct would be under watch. After completion of probation, till the availability of permanent vacancy, they shall be treated as temporary employee. The applicant continued to serve and was considered on 31.10.81 along with 2 others under Rule 3 & 4 of the C.C.S. (TS) Rules,

1965 for quasi permanency and was made quasi-permanent w.e.f. 29.06.1981. The applicant, however, was confirmed in his appointment w.e.f. 26.06.1983 while immediate junior to the applicant was confirmed w.e.f. 26.07.1982. The applicant, after making a representation on 6th September, 1988 filed this Application praying for the grant of relief that his date of confirmation be anti-dated to 26th July, 1982 and the respondents may be restrained to promote Inspectors from the cadre of Sub Inspectors without considering the claim of the applicant.

2. A notice was issued to the respondents and in the reply filed it is stated that applicant was given a minor penalty punishment of Censure by the order dt 10.06.1982. The applicant, therefore, could not be considered for confirmation in his turn. In view of the instructions issued by the Commissioner of Police that if, minor punishment is awarded, the confirmation be deferred for 6 months and in the case of major punishment for 1 year. It was because of this, that the date of confirmation of the applicant is 26.06.1983.

3. We have heard the learned counsel of both the parties at length and perused the record. The respondents have not disputed the successful completion of probation by the applicant. It is not in controversy that the orders of quasi permanency w.e.f. 29.06.81 was passed on 31.10.81. This goes to show that during all these period from 29.06.1978, applicant's work and conduct was satisfactory. It is only in June 1982 Censure was given to him. But the Appointment and Recruitment Rules which also provide for confirmation, do not lay down any such provision by which after successful completion of probation, the confirmation can be delayed for minor

penalty for 6 months and for major penalty for one year. The administrative instructions cannot substitute the rules and can only be read harmoniously with the rules. In this case Rule 5(a) clearly lays down that after completion of successfully of the probation period, the person is to be confirmed on the availability of vacancy. In the present case, the vacancy was available on 26th July, 1982. In view of this applicant has prior claim for confirmation then his juniors. The Recruitment rules and Appointment rules do not lay down any deferment of confirmation on account of any minor or major penalty after the period of probation has been successfully completed.

4. The learned counsel has taken us to the unamended rules of 1980. The said rules have been amended in 1983 where maximum period of probation has been provided for 3 years. There will be deemed confirmation in view of the fact that the period of probation cannot be extended beyond 3 years. This is also the law laid down in the case of State of Punjab Vs Dharam Singh, 1968 SC 1220. This is a Constitution Bench decision on the Punjab Police Rules regarding the maximum period of probation of 3 years. Thereafter, there is deemed and automatic confirmation. The Hon'ble Supreme Court has considered vividly the relevant law on every aspect of probation and confirmation, and laid down that where maximum period is provided, there shall be automatic confirmation which cannot be extended. A probationer has either to be discharged from service or he has to be confirmed, there is no other alternative left.

5. The learned counsel has also referred to the case of Shri Shiv Charan Verma Vs State of Haryana Electricity Board reported in AIR 1991 SC 1676. In this case also

(10)

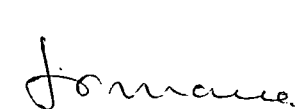
a punishment was imposed on the petitioner and his confirmation was deferred to December, 1969 while those who were junior to him were given confirmation from April, 1969. The Hon'ble Supreme Court held when the applicant has been treated as having been successfully completed period of probation even by grant of increment after 2 years, his confirmation could not have been deferred to his disadvantage.

6. The learned counsel has also taken us to the rights and liabilities of the probationers in the case of Ajit Singh Vs State of Punjab 1983 (2) SCC P217 at P-220. However, this point is not at all in the conspectus and circumstances of the present case. The respondents have not challenged in their reply the successful completion of probation of the applicant. The contest of the respondents has been that 2 years period of probation is to be reckoned from the date of availability of vacancy. This is not the spirit of Rule 5(e) of the rules.

7. In view of the facts and circumstances the date of confirmation of applicant has to be from the date from which his immediate juniors have been confirmed.

8. The application is allowed. The respondents are directed to anti-date the date of confirmation of the applicant from 26th July 1982 instead of 26th January, 1983.
Cost on parties.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)